

David W. Hall (SBN 274921)  
dhall@hedinhall.com  
Frank S. Hedin (SBN 291289)  
fhedin@hedinhall.com  
**HEDIN HALL LLP**  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94104  
Telephone: (415) 766-3534  
Facsimile: (415) 402-0058

Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
10728 Lindbrook Dr. Los Angeles, CA 90024  
Telephone: (310) 474-9111  
Facsimile: (310) 474-8585

*Counsel for Plaintiff and the Putative Class*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KAREN C. ALEXANDER, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.; and BANK OF  
AMERICA CORPORATION,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT  
DEMAND FOR JURY TRIAL**

Plaintiff Karen C. Alexander, individually and on behalf of all others similarly situated, alleges as follows based on personal knowledge as to herself, on the investigation of her counsel, and on information and belief as to all other matters:

**NATURE OF ACTION**

1. Plaintiff brings this Class Action Complaint against Bank of America, N.A. and Bank of America Corporation, and their present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or other entities (collectively, "Bank of America" or "Defendant"), for legal and equitable remedies resulting from Bank of America's

1 illegal assessment of overdraft fees in connection with “one-time,” “non-recurring” debit  
2 card transactions authorized into a negative account balance, including such transactions  
3 to Lyft Inc. (“Lyft”) and many other popular merchants.

4         2.       At all times between May 12, 2014 and April 6, 2017, Bank of America promised  
5 its account holders that it “do[es] not authorize overdrafts for everyday *non-recurring* debit  
6 card transactions and ATM transactions” and “do[es] *not charge you an Overdraft Item fee*  
7 on an everyday *non-recurring* debit card transaction.” However, with respect to *recurring*  
8 debit card transactions, Bank of America promised its account holders during that period  
9 of time that it would authorize overdrafts and would charge a corresponding overdraft fee:  
10 “We do charge you an Overdraft Item fee each time we authorize and pay any other type  
11 of overdraft transaction [besides non-recurring transactions]. These other types of  
12 transactions include checks and other transactions made using your checking account  
13 number, *recurring debit card transactions*, Online and automatic bill payments, and ACH  
14 transactions.”

15         3.       At all times from May 12, 2014 through April 6, 2017, Bank of America’s  
16 contractual documents with account holders drew the following distinction between “non-  
17 recurring” debit card transactions (which would not be subject to overdraft fees) and  
18 “recurring” debit card transactions (which would be subject to overdraft fees):

19                 Everyday non-recurring debit card transactions are  
20 usually purchases made with your debit card or debit card  
21 number on a one-time or day-to-day basis. As examples, you  
22 use your debit card for purchases of groceries, gas, or coffee in  
23 the morning. Recurring debit card transactions are usually  
24 transactions that you set up to occur automatically, such as  
25 automatic bill payments. As examples, you give merchants your  
26 debit card number to use for rent, mortgage, car, or utility  
27 payments.

28         4.       Despite Bank of America’s contractual promises to its account holders that it  
“do[es] not authorize overdrafts for everyday non-recurring debit card transactions and  
ATM transactions” and “do[es] not charge you an Overdraft Item fee on an everyday non-  
recurring debit card transaction,” Bank of America systematically authorized numerous

1 types of non-recurring debit card transactions into a negative balance and charged a \$35.00  
2 overdraft fee for each such transaction between May 12, 2014 and April 6, 2017. Bank of  
3 America did this by misclassifying certain obviously non-recurring debit card transactions  
4 as “recurring” transactions, or by failing to re-classify such misclassified transactions as  
5 “non-recurring” transactions – including with respect to Lyft transactions, which between  
6 May 12, 2014 and April 6, 2017 were transactions plainly “made with [a] debit card or debit  
7 card number on a one-time or day-today basis,” and not “set up to occur automatically.”

8 5. Bank of America authorized these misclassified transactions in order to  
9 maximize its overdraft fee revenue, at the expense of its own account holders, many of  
10 whom are among the most vulnerable members of society.

11 6. For people living paycheck to paycheck, like Plaintiff and other members of  
12 the Class, Bank of America’s oppressive overdraft fee practices have caused them damages  
13 and had a serious effect on their everyday lives.

14 7. The business practices of Bank of America described herein were not only  
15 oppressive – they were also illegal. It’s nigh time for Bank of America to return, with  
16 interest, the millions upon millions of dollars it has illegally siphoned from its customers’  
17 accounts, \$35.00 overdraft fee at a time, and to face additional consequences, both remedial  
18 and punitive, for having engaged in these wrongful acts in the first place.

19 8. Plaintiff seeks monetary damages from Bank of America – including actual,  
20 compensatory, consequential, and punitive damages, to the fullest extent permitted by law  
21 – on behalf of herself and the other members of the Class.

#### 22 JURISDICTION AND VENUE

23 9. The Court has jurisdiction over this action pursuant to the Class Action  
24 Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2) & (6), because the aggregate claims of the  
25 putative class members exceed \$5 million, exclusive of interest and costs, and because at  
26 least one of the members of the proposed Class is a citizen of a different state than Bank  
27 of America.

10. Personal jurisdiction and venue are proper in this District pursuant to the “Deposit Agreement and Disclosures” entered into between Plaintiff and Bank of America because Plaintiff’s account was opened, and is presently maintained, at a Bank of America financial center located in California. See “Deposit Agreement and Disclosures,” dated March 4, 2016, attached hereto as Exhibit “A” (hereinafter the “Deposit Agreement”), at 48 (“Any action or proceeding regarding your account or this deposit agreement must be brought in the state in which the financial center that maintains your account is located. You submit to the personal jurisdiction of that state.”).

**PARTIES**

11. Plaintiff is a resident and citizen of Vallejo, California. At all times mentioned herein, Plaintiff has maintained a personal checking account with Bank of America that was opened at a Bank of America branch in California.

12. Bank of America is a national bank with its headquarters and principal place of business in Charlotte, North Carolina. Bank of America provides, *inter alia*, retail banking services to consumers, including personal checking accounts and debit cards to Plaintiff and the members of the putative Class. Bank of America operates banking centers throughout California and the United States.

## FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

## I. OVERDRAFT FEES ARE LUCRATIVE FOR BANK OF AMERICA, BUT DEVASTATING FOR ITS POOREST AND MOST VULNERABLE CUSTOMERS

13. Fee-based overdraft programs cost American consumers at least \$23.7 billion each year in the aggregate – more than the loans extended in exchange for those fees, which amount to \$21.3 billion.<sup>1</sup> Debit card transactions, the most common triggers of overdraft fees, cause an average overdraft of approximately \$17.00 yet trigger an average

<sup>1</sup> Leslie Parrish, *Overdraft Explosion: Bank fees for overdrafts increase 35% in two years*, Center for Responsible Lending, Oct. 6, 2009, *available at* <http://www.responsiblelending.org/overdraftloans/research-analysis/crl-overdraft-explosion.pdf>.

1 fee of approximately \$35.00.<sup>2</sup> Most consumers do not learn of an overdraft for two or more  
2 days, further exposing them to additional overdraft fees in the interim.<sup>3</sup>

3 14. The overwhelming majority of overdraft fees are paid by chronic overdrafters  
4 who are also those least able to recover from them. According to research by the Consumer  
5 Financial Protection Bureau, less than one-fifth of account holders – those who incur three  
6 or more overdraft fees per year – pay more than 90 percent of all overdraft fees triggered  
7 by debit cards, checks, and ACH electronic transactions.<sup>4</sup> And a study conducted by Pew  
8 Charitable Trusts found that “heavy overdrafters” – consumers who pay more than \$100 in  
9 overdraft fees in a year – generally have incomes below the U.S. average, and overdraft  
10 fees consumed nearly a full week’s worth of their household incomes on average during  
11 the past year.<sup>5</sup> Seniors, young adults, military families, and the unemployed are hit  
12 particularly hard.<sup>6</sup> Older Americans aged 55 and over pay over \$6.2 billion in total overdraft  
13

---

14  
15  
16  
17 <sup>2</sup> Eric Halperin, Lisa James, and Peter Smith, *Debit Card Danger: Banks offer little warning and few*  
18 *choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending, at 25, Jan.  
19 25, 2007, available at [http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-](http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf)  
20 [Danger-report.pdf](http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf).

21 <sup>3</sup> The Pew Charitable Trusts, *Overdrawn: Persistent Confusion and Concern About Bank Overdraft*  
22 *Practices*, June 2014, at 9-10, available at [http://www.pewtrusts.org/~media/assets/2014/06/26/safe\\_checking\\_overdraft\\_survey\\_report.pdf](http://www.pewtrusts.org/~media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf).

23 <sup>4</sup> Consumer Financial Protection Bureau, *Data Point: Checking Account Overdraft*, at 18, July 2014,  
24 available at [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf).

25 <sup>5</sup> The Pew Charitable Trusts, *Heavy Overdrafters: A Financial Profile*, at 1, Apr. 2016, available at  
26 <http://www.pewtrusts.org/~media/assets/2016/04/heavyoverdrafters.pdf>.

27 <sup>6</sup> See FDIC Study of Bank Overdraft Programs (Nov. 2008), at v.; Leslie Parrish, *Consumers Want*  
28 *Informed Choice on Overdraft Fees and Banking Options*, CRL Research Brief, Apr. 16, 2008, available at  
<http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf>; see  
also Comments of the Center for Responsible Lending to Board of Governors of the Federal Reserve System  
on Proposed Rule to Amend Regulation E—Overdraft Practices, Part II.B.1(b), pp. 10-12, Mar. 30, 2009, available  
at [http://www.responsiblelending.org/overdraft-loans/policylegislation/regulators/comments-regulation-](http://www.responsiblelending.org/overdraft-loans/policylegislation/regulators/comments-regulation-e_overdraft-practices.pdf)  
[e\\_overdraft-practices.pdf](http://www.responsiblelending.org/overdraft-loans/policylegislation/regulators/comments-regulation-e_overdraft-practices.pdf).

1 fees annually<sup>7</sup> – \$2.5 billion for debit card/ATM transactions alone<sup>8</sup> – and those heavily  
2 dependent on Social Security pay \$1.4 billion annually.<sup>9</sup>

3 15. As the financial toll of fee-based overdraft programs has increasingly and  
4 disproportionately fallen on the shoulders of our most vulnerable citizens, big banks have  
5 steadily become more and more reliant on overdraft fees as a revenue source. For instance,  
6 in 2015, banks in the United States with assets exceeding \$1 billion reported \$11.16 billion  
7 in overdraft fee revenue – which constituted nearly two-thirds of all consumer deposit  
8 account revenue for those banks.

9 16. For Bank of America in particular, overdraft has evolved from an occasional  
10 courtesy into a product that it depends upon for revenue. Indeed, in 2016, Bank of America  
11 made more than \$1.7 billion on overdraft fees, siphoned \$35.00 fee at a time largely out of  
12 accounts held by its poorest customers, as discussed above. On average, each Bank of  
13 America checking account holder is charged \$497.18 in overdraft fees each year.<sup>10</sup>

14 17. Faced with heightened regulatory scrutiny in recent years, but still having an  
15 insatiable appetite for overdraft fee revenue to feed, Bank of America has been forced to  
16 develop creative new strategies, legal or not, to lure its account holders into overdraft.<sup>11</sup>  
17 This case concerns one such strategy, executed by Bank of America in plain violation of  
18

19  
20 <sup>7</sup> Leslie Parrish and Peter Smith, *Shredded Security: Overdraft practices drain fees from older*  
21 *Americans*, Center for Responsible Lending, June 18, 2008, available at  
<http://www.responsiblelending.org/overdraftloans/research-analysis/shredded-security.pdf>.

22 <sup>8</sup> *Id.*

23 <sup>9</sup> *Id.* At 6, Table 1.

24 <sup>10</sup> Byrne, John, *Bank Fees rise to all-time high – and nobody can stop them*, New York Post, Mar. 12,  
25 2017, available at <https://nypost.com/2017/03/12/bank-fees-rise-to-all-time-high-and-nobody-can-stop-them/>.

26 <sup>11</sup> See, e.g., *Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG (S.D. Cal.) (\$66.6 million  
27 settlement for improper extended overdraft fees); *Bodnar v. Bank of America, N.A.*, Case No. 5:14-cv-3224-  
28 EGS (E.D. Pa.) (\$27.5 million settlement for improper overdraft fees charged despite sufficient available  
funds); *Pantelyat v. Bank of America, N.A.*, Case No. 1:16-cv-8964-AJN (S.D.N.Y.) (\$22 million settlement for  
improper overdraft fees charged on non-recurring Uber transactions).

1 the express terms of its standardized Deposit Agreement with all personal checking account  
2 holders.

3 **II. BANK OF AMERICA PROMISES NOT TO CHARGE OVERDRAFT FEES FOR**  
4 **NON-RECURRING DEBIT TRANSACTIONS, BUT THEN DOES SO ANYWAY**

5 18. Bank of America's relationship with Plaintiff and the other members of the  
6 Class was at all times mentioned herein governed by the Deposit Agreement – a  
7 standardized contract for deposit accounts, the terms of which are drafted by Bank of  
8 America, amended by Bank of America from time to time at its convenience and sole and  
9 complete discretion, and imposed by Bank of America on all of its customers. See Ex. A.

10 19. For the better part of the past two decades, Bank of America has issued debit  
11 cards to its personal checking account customers, including to Plaintiff and the members  
12 of the Class, which can be used to make purchases, payments, withdrawals and, of  
13 particular relevance to this case, both "recurring" and "non-recurring" debit transactions.

14 20. At all times mentioned herein, including between May 12, 2014 and April 6,  
15 2017, the Deposit Agreement defined a "recurring" debit card transaction as one that occurs  
16 at a regular interval, like a payment for a mortgage, utility bill, insurance premium, or  
17 membership fee, and defined a "non-recurring" debit card transaction as one that occurs  
18 on a one-time or day-to-day basis, like a purchase at a gas station.

19 **A. In 2010, Bank of America For the First Time Distinguishes Between "Non-**  
20 **Recurring" and "Recurring" Debit Card Transactions for Overdraft Fee**  
**Purposes, And Uses the Distinction to Tout Itself As a Consumer Advocate**

21 21. In 2010, Bank of America suddenly began promising its account holders that  
22 it would not authorize (and would thus cease charging \$35.00 overdraft fees resulting from)  
23 "one-time," "non-recurring" debit card transactions for which there are insufficient funds to  
24 cover, but would continue to authorize (and thus continue charging \$35.00 overdraft fees  
25 resulting from) "recurring" debit card transactions for which there are insufficient funds to  
26 cover. In other words, Bank of America for the first time adopted a radical distinction,  
27 which had significant implications on the Bank's overdraft fee policies, between the two  
28 types of debit card transactions: (1) one-time debit card transactions (which it promised

1 would be absolutely protected from overdraft fees); and (2) recurring debit card transactions  
2 (which it said could be subjected to overdraft fees).

3         22. Bank of America then seized upon the distinction it had drawn between one-  
4 time, non-recurring debit card transactions and recurring debit card transactions to  
5 publically tout, through a massive media effort, its supposedly pro-consumer decision not  
6 to charge overdraft fees on routine debit card transactions. For example, Susan Faulkner,  
7 an executive at Bank of America, was quoted in a CNN article from 2010 as saying: “Our  
8 customers have been clear that they want to know if a purchase is going to overdraw their  
9 account.”<sup>12</sup> Around the same time, a New York Times article stated: “In a move that could  
10 bring an end to the \$40 cup of coffee, Bank of America said on Tuesday that it was doing  
11 away with overdraft fees on purchases made with debit cards[.] Bank [of America] officials  
12 said that effective this summer, customers who try to make purchases with their debit cards  
13 without enough money in their checking accounts will simply be declined.”<sup>13</sup> Faulkner was  
14 quoted in the New York Times piece as well: “What our customers kept telling me is ‘just  
15 don’t let me spend money that I don’t have’. . . . We wanted to help them avoid those  
16 unexpected overdraft fees.”<sup>14</sup>

17         23. Accordingly, as both Ms. Faulkner surely understood and Bank of America  
18 clearly intended, this new distinction in debit card transactions caused consumers to rely  
19 upon the overdraft fee policy implicated by the distinction and to therefore expect that,  
20 when they attempt to use their debit card for a routine non-recurring purchase in the  
21 future, the transaction will only be approved if sufficient funds exist to cover the purchase,  
22 and in no event will the transaction result in an overdraft fee.

---

24 <sup>12</sup> Hibah Yousuf, *BofA to scrap overdraft fees on debit purchases*, CNN Money, Mar. 10 , 2010, available  
25 at [http://money.cnn.com/2010/03/10/news/companies/Bank\\_of\\_America\\_overdraft\\_fees/](http://money.cnn.com/2010/03/10/news/companies/Bank_of_America_overdraft_fees/) (emphasis added).

26 <sup>13</sup> Andrew Martin, *Bank of America to End Debit Card Overdraft Fees*, The New York Times, Mar. 9,  
27 2010, available at <http://www.nytimes.com/2010/03/10/your-money/credit-and-debit-cards/10overdraft.html>  
(emphasis added).

28 <sup>14</sup> *Id.* (emphasis added).



1           24.     After repeatedly making these promises to the American public in 2010, in  
2 The New York Times and elsewhere, Bank of America took pen to paper and memorialized  
3 these significant, material promises in its standardized Deposit Agreement with its personal  
4 checking account holders, including Plaintiff and the other members of the Class.

5                   **B. Bank of America Amends the Deposit Agreement to Provide Absolute**  
6                   **Immunity from Overdraft Fees for Non-Recurring Debit Card Transactions**

7           25.     Later in 2010, consistent with its public statements in The New York Times  
8 and elsewhere, Bank of America amended its Deposit Agreement and other documents  
9 governing its relationship with Plaintiff and the other unnamed Class members to expressly  
10 state that Bank of America will not under any circumstances authorize overdrafts, or charge  
11 overdraft fees for, one-time, “non-recurring” debit card transactions, as that term was  
12 defined in the Deposit Agreement.

13           26.     Specifically, in June 2010, Bank of America issued a new Deposit Agreement  
14 (the pertinent terms of which remained in effect without amendment or alteration until  
15 April 7, 2017), which stated in relevant part:

16                   OVERDRAFT AND DECLINED OR RETURNED ITEMS

17                   When we determine that you do not have enough available funds  
18 in your account to cover a check or other item, then we consider  
19 the check or other item an insufficient funds item. If you have  
20 enrolled in one of the optional Overdraft Protection plans and  
21 have enough available funds in the linked account under the  
22 Overdraft Protection plan, we transfer funds to cover the item.  
23 Otherwise, without notice to you, we either authorize or pay the  
24 insufficient funds item and overdraw your account (an overdraft  
25 item) or we decline or return the insufficient funds item without  
26 payment (a returned item). . . .

27                   PERSONAL ACCOUNTS - OVERDRAFT PRACTICES AND  
28                   SETTINGS

29                   With our Standard Overdraft Setting, we do not authorize  
30 overdrafts for everyday non-recurring debit card transactions  
31 and ATM transactions. This means that we decline everyday  
32 non-recurring debit card transactions and ATM transactions  
33 when we determine that at the time of the transaction you may  
34 not have enough available funds in your account (or in any  
35 applicable Overdraft Protection plan) to cover the transaction .  
36 . . . With this overdraft setting, we may authorize and pay  
37 overdrafts for other types of transactions. Other types of  
38 transactions include checks and other transactions made using

1 your checking account number, recurring debit card  
2 transactions, ACH transactions, preauthorized payments, and  
automatic and online bill payments.

3 Ex. A at 11-13, 21-22 (emphasis added).

4 27. The Deposit Agreement explained the distinction between “non-recurring” and  
5 “recurring” debit card transactions as follows:

6 *What are everyday non-recurring debit card transactions and*  
7 *what are recurring debit card transactions?* Everyday non-  
8 recurring debit card transactions are usually purchases made  
9 with your debit card or debit card number on a one-time or day-  
today basis. As examples, you use your debit card for purchases  
10 of groceries, gas, or coffee in the morning. Recurring debit card  
11 transactions are usually transactions that you set up to occur  
automatically, such as automatic bill payments. As examples,  
you give merchants your debit card number to use for rent,  
mortgage, car, or utility payments.

12 *Id.* at 12.

13 28. The Deposit Agreement expressly incorporated by reference a document  
14 entitled “Schedule of Fees,” a copy of which is attached hereto as Exhibit “B”. The Schedule  
of Fees stated, in pertinent part:

15 We do not charge you an Overdraft Item fee on an everyday  
16 non-recurring debit card transaction. We also do not charge you  
17 an Overdraft Item fee on a ATM transaction unless you agreed  
18 to our overdraft practices for that particular ATM transaction.  
We do charge you an Overdraft Item fee each time we authorize  
19 and pay any other type of overdraft transaction. These other  
types of transactions include checks and other transactions  
made using your checking account number, recurring debit card  
20 transactions, Online and automatic bill payments, and ACH  
transactions.

21 *See* Ex. B, at 13 (emphasis added).

22 29. In July 2014, Bank of America drafted and imposed on account holders a  
23 document entitled “Important Information about Your Card Agreement and Disclosure,”  
24 attached hereto as Exhibit “C”, which stated in pertinent part:

25 Overdrafts and Unposted Transactions  
26 When you do not have enough available funds in your account  
27 ... to cover everyday non-recurring debit card purchases or ATM  
28 withdrawals, we will decline the transaction and you will not be  
subject to overdraft fees. For checks, ACH, recurring debit card  
transactions and online bill payments, we may decline or return  
the transaction unpaid or we may complete it and overdraw  
your account.

1  
2 See Ex. C, ¶¶ 4b, 7 (emphasis added).

3 30. Thus, by the express terms of the Deposit Agreement (and related documents)  
4 in effect at all times between May 12, 2014 and April 6, 2017, Bank of America promised its  
5 personal checking account holders, including Plaintiff and the other members of the Class,  
6 that it would only charge overdraft fees as a result of recurring debit card transactions  
7 authorized into a negative balance, and would never authorize non-recurring debit card  
8 transactions into a negative balance much less charge overdraft fees for such transactions.

9 31. During this same period of time, May 12, 2014 through April 6, 2017, Bank of  
10 America's website reiterated its overdraft fee policies pertaining to recurring and non-  
11 recurring transactions as follows:

12 ATM withdrawals and everyday, non-recurring debit card  
13 transactions (individual debit card purchases such as at the  
14 grocery store or a one-time online purchase), will only be  
15 authorized when we determine you have enough available funds  
16 in your eligible account or in your eligible linked Overdraft  
17 Protection account at the time of the transaction. Otherwise, we  
18 typically decline the transaction and we do not charge an  
19 Overdraft Item fee.

20 For other types of transactions, such as checks, Bill Pay and  
21 other electronic payments, as well as recurring debit card  
22 payments we may pay transactions when you don't have  
23 enough available funds in your checking account or linked  
24 Overdraft Protection account at the time of the transaction.

25 See Glossary of Banking Terms, Definition of "Standard Setting" (also available at  
26 <https://www.bankofamerica.com/deposits/manage/glossary.go> (last visited Nov. 14, 2016)), a  
27 copy of which is attached hereto as Exhibit "D".

28 32. Likewise, the "FAQs" section of the Bank of America webpage pertaining to  
"overdraft services," also in effect at all times between May 12, 2014 and April 6, 2017, stated  
in pertinent part:

When you use your debit card for everyday, non-recurring  
purchases, when we determine you don't have enough funds in  
your account or linked Overdraft Protection account our  
standard practice is to decline the transaction, and we do not  
charge an overdraft fee.

1 For other types of transactions – like checks, Bill Pay and other  
2 electronic payments, as well as recurring debit card payments –  
3 made using your checking account number, we may charge you  
4 a NSF: Returned Item fee each time we decline or return one of  
these transactions. If we pay one of these transactions, we  
charge you an Overdraft Item fee.

5 See “FAQs: With Bank of America's Overdraft Settings, will I still be subject to Overdraft  
6 and NSF: Returned Item fees?,” at 4, a copy of which is attached hereto as Exhibit “E”, *also*  
7 *available at <https://www.bankofamerica.com/deposits/manage/faq-overdraft-services.go>*  
(last visited Nov. 14, 2016).

8 33. Another FAQ section of Bank of America's website stated, likewise in  
9 reference to the contractual promises in the Deposit Agreement in effect between May 12,  
10 2014 and April 6, 2017, that “[w]e do not charge you an Overdraft item fee on an everyday  
11 non-recurring debit transaction.” See “FAQs: Bank Account Rates and Fees, What is an  
12 Overdraft Item fee?,” at 1, a copy of which is attached hereto as Exhibit “F”, *also available*  
13 *at <https://www.bankofamerica.com/deposits/manage/faq-account-rates-fees.go>* (last visited  
14 Nov. 14, 2016).

15 34. And on the “Checking Clarity Statement” page of its website, described as  
16 providing “checking fee and policy information in a simple format so you know the ins and  
17 outs of your account,” Bank of America provided its account holders a document entitled  
18 “Overview of Bank of America Core Checking key policies and fees”, which, with respect to  
19 the Deposit Agreement in effect between May 12, 2014 and April 6, 2017, stated in pertinent  
20 part: “To help you avoid fees, we won’t authorize ATM withdrawals or everyday debit card  
21 purchases when you don't have enough money in your account at the time of the  
22 transaction.” See “Checking Clarity Statement (landing page),” a copy of which is attached  
23 hereto as Exhibit “G”, *also available at*  
24 *<https://www.bankofamerica.com/deposits/checking/checking-clarity-statement.go>* (last  
25 visited Nov. 14, 2016); *see also* “Overview of Bank of America Core Checking key policies  
26 and fees,” Aug. 2016, a copy of which is attached hereto as Exhibit “H”.

1           35.     The foregoing contractual promises made by Bank of America in its Deposit  
2 Agreement and other account-related documents – all of which remained in effect without  
3 material change for the next seven years, including at all times between May 12, 2014 and  
4 April 6, 2017 – were repeatedly broken by Bank of America over that same period of time,  
5 damaging Plaintiff and the other members of the Class, as discussed below in detail.

6                   **C. In Breach of Its Deposit Agreement with Account Holders, Including**  
7                   **Plaintiff and the Class, Bank of America Charges Overdraft Fees On Non-**  
8                   **Recurring Debit Card Transactions Authorized Into a Negative Balance**

9           36.     The debit card transaction processing and overdraft fee assessment practices  
10 employed by Bank of America from May 12, 2014 through April 6, 2017 were completely  
11 contrary to the plain language of the governing Deposit Agreement and other account-  
12 related documents in effect during that period of time, in two primary ways.

13           37.     First, between May 12, 2014 and April 6, 2017, Bank of America misclassified,  
14 or intentionally failed to properly reclassify, many one-time, “non-recurring” debit card  
15 transactions as “recurring” debit card transactions. For example, Bank of America debit  
16 card charges from Lyft, among several other merchants, including Uber, were misclassified  
17 during this period of time as “recurring,” even though they were plainly “non-recurring”  
18 within the meaning of the Deposit Agreement and related documents in effect between May  
19 12, 2014 and April 6, 2017. Indeed, during that period of time, charges from merchants such  
20 as Lyft and Uber, among many others, did not and indeed could not be set to occur  
21 automatically at a designated interval, such as on a weekly or monthly basis. Rather, at  
22 that time, Lyft and Uber charges occurred on a ride-by-ride basis only, and thus plainly  
23 constituted one-time every day transactions, falling squarely within Bank of America’s own  
24 definition of “non-recurring” debit card transactions, which Bank of America promised  
25 would be absolutely exempt from overdraft fees.

26           38.     Second, between May 12, 2014 and April 6, 2017, Bank of America  
27 systematically authorized into a negative balance and charged \$35.00 overdraft fees for  
28

1 these misclassified non-recurring debit card transactions.<sup>15</sup> And if a deposit was not made  
2 to bring the negative balance back into the black within seven days, Bank of America  
3 charged another \$35.00 “extended overdrawn balance charge” for the misclassified  
4 transaction. Bank of America assessed these fees despite its repeated contractual  
5 representations to all account holders between May 12, 2014 and April 6, 2017 that (1) it will  
6 only authorize, and will only charge overdraft fees for, recurring debit card transactions for  
7 which there are insufficient available funds to cover; and (2) that it will not authorize, and  
8 will not charge overdraft fees for, non-recurring debit card transactions for which there are  
9 insufficient funds to cover.

10 39. The practices alleged above were not only contrary to Bank of America’s  
11 contractual obligations to its account holders, they also flew directly in the face of its so-  
12 called “consumer friendly” overdraft fee policies, which were supposedly designed “to help  
13 [customers] avoid . . . unexpected overdraft fees” by “[not] let[ting] [them] spend money  
14 that [they] don’t have.” In reality, the classification of Lyft and innumerable other obviously  
15 one-time debit card transactions as “recurring” was specifically designed to let consumers  
16 blow money they didn’t have and to incur costly fees as a result.

17 40. To recap, after having affirmatively told its customers that they no longer  
18 needed to worry about spending money they didn’t have in the course of making non-  
19 recurring, one-time, day-to-day purchases, and after having memorialized those promises  
20 in the governing Deposit Agreement in effect between May 12, 2014 and April 6, 2017, Bank  
21 of America purposefully broke those promises and took advantage of the very trust it had  
22 instilled in its customers by authorizing various types of one-time non-recurring debit card  
23 transactions (from some of the most popular merchants, including Lyft) into negative  
24 account balances, for the sole purpose of maximizing its overdraft fee revenue.  
25  
26

---

27  
28 <sup>15</sup> Egregiously, most of these misclassified charges are of nominal dollar amounts (most Lyft charges are under \$10.00), significantly less than the \$35.00 fee imposed by Bank of America.

1       **III.     BANK OF AMERICA REPEATEDLY CHARGES PLAINTIFF OVERDRAFT FEES**  
2       **FOR NON-RECURRING DEBIT CARD PURCHASES, INCLUDING FOR LYFT**  
3       **RIDES AND NUMEROUS OTHER ONE-TIME TRANSACTIONS**

4       41.     On numerous occasions between May 12, 2014 and April 6, 2017, Bank of  
5     America authorized a “non-recurring” debit card transaction, as that term was defined in  
6     the Deposit Agreement and related account documents in effect between May 12, 2014 and  
7     April 6, 2017, into a negative balance in Plaintiff’s personal checking account, and as a result  
8     charged a \$35.00 overdraft fee to Plaintiff’s personal checking account for the transaction.

9       42.     For example, on September 25, 2014, Plaintiff used her Bank of America debit  
10    card to make three one-time purchases from Lyft, the ridesharing company, each in an  
11    amount of less than \$25.00. Each of these three purchases constituted a “non-recurring”  
12    debit card transaction (within the meaning of the Deposit Agreement and related documents  
13    in effect between May 12, 2014 and April 6, 2017), because all Lyft purchases made by  
14    Plaintiff occurred on a one-time, day-to-day basis, and because such purchases were not,  
15    and indeed could not be, set up to occur automatically at a set interval between May 12,  
16    2014 and April 6, 2017.

17    43.     When Plaintiff used her debit card to purchase each of the three Lyft rides on  
18    September 25, 2014, as well as at various other occasions between May 12, 2014 and April  
19    6, 2017 when Plaintiff initiated one-time, non-recurring Lyft debit card transactions that  
20    Bank of America authorized into a negative balance, Plaintiff reasonably believed, based  
21    upon the Deposit Agreement and related documents in effect at those times, as well as  
22    other statements publicly made by Bank of America interpreting those documents, that Lyft  
23    debit card purchases constituted non-recurring debit card transactions, that Bank of  
24    America would thus only authorize such a purchase if she had sufficient funds in her  
25    checking account to cover it, and that under no circumstances would Bank of America  
26    charge her an overdraft fee resulting from such a purchase.

27    44.     Nevertheless, Bank of America misclassified each of the three non-recurring  
28    Lyft debit card transactions that Plaintiff initiated on September 25, 2014 as a “recurring”  
debit card transaction. And then, despite the fact that Plaintiff’s checking account did not

1 have sufficient funds to cover any of the three one-time, non-recurring Lyft transactions  
2 on September 25, 2014, Bank of America authorized the charges anyway – each one  
3 bringing her account balance further into the negative. As a result, later that same day,  
4 Bank of America charged three \$35.00 overdraft fees to Plaintiff's checking account, one for  
5 each of the three misclassified Lyft transactions improperly authorized into a negative  
6 account balance by Bank of America.

7 45. On several other occasions between May 12, 2014 and April 6, 2017, Plaintiff's  
8 personal checking account has been charged \$35.00 overdraft fees as a result of various  
9 transactions, including from Lyft and many other merchants, that were also "non-recurring"  
10 in nature (within the meaning of the Deposit Agreement and related documents in effect  
11 between May 12, 2014 and April 6, 2017) but were nonetheless authorized by Bank of  
12 America into a negative account balance.

13 46. The Deposit Agreement and other related account documents in effect  
14 between May 12, 2014 and April 6, 2017 expressly prohibited the authorization of, let alone  
15 the imposition of any overdraft fees related to, the non-recurring Lyft transactions made  
16 by Plaintiff on September 25, 2014 (or the numerous other Lyft transactions and other one-  
17 time debit transactions to other merchants made by Plaintiff during the relevant period of  
18 time that were likewise misclassified and resulted in overdraft fees against Plaintiff's  
19 account).

20 47. No reasonable person would have considered the Lyft charges or any of  
21 Plaintiff's other one-time debit card charges that Bank of America authorized into a negative  
22 balance to be "recurring" within the meaning of the Deposit Agreement or related  
23 documentation in effect between May 12, 2014 and April 6, 2017.

24 48. Plaintiff is informed and believes, and thereupon alleges, that Bank of America  
25 had actual knowledge, prior to May 12, 2014 and during the period of time between May 12,  
26 2014 and April 6, 2017, that Lyft debit card transactions, as well as numerous other one-  
27 time, non-recurring debit card transactions, including Uber debit card transactions, various  
28



1 types of PayPal debit card transactions, and a long list of other one-time debit card  
2 transactions, were being misclassified as “recurring”, were frequently authorized into  
3 negative account balances, and were thus routinely triggering improper overdraft fees.  
4 Plaintiff is informed and believes, and thereupon alleges, that despite having had such actual  
5 knowledge, Bank of America intentionally failed between May 12, 2014 and April 6, 2017 to  
6 process Lyft and various other one-time debit card transactions as “non-recurring” within  
7 the meaning of the Deposit Agreement and related documents in effect between May 12,  
8 2014 and April 6, 2017.

9 49. In imposing and collecting overdraft fees as a result of these one-time, non-  
10 recurring debit card transactions improperly authorized into a negative account balance  
11 between May 12, 2014 and April 6, 2017, Bank of America breached the Deposit Agreement  
12 and other account-related documents that governed its relationship with Plaintiff and the  
13 other members of the Class, causing them monetary damages.

#### 14 CLASS ALLEGATIONS

15 50. Plaintiff brings this action on behalf of herself and all others similarly situated  
16 pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the  
17 numerosity, commonality, typicality, adequacy, predominance, and superiority  
18 requirements of Rule 23.

19 51. The proposed Class is defined as:

20 All individuals in the United States who, at any time  
21 between May 12, 2014 and April 6, 2017, held a personal checking  
22 account with Bank of America that was charged an overdraft fee  
23 as a result of a non-recurring debit card transaction authorized  
24 into a negative account balance.

25 52. Plaintiff reserves the right to modify or amend the definition of the proposed  
26 Class before the Court determines whether certification is appropriate.

27 53. Excluded from the Class are Bank of America, its parents, subsidiaries,  
28 affiliates, officers and directors, any entity in which Bank of America has a controlling  
interest, all customers who make a timely election to be excluded, governmental entities,

1 and all judges assigned to hear any aspect of this litigation, as well as their immediate  
2 family members.

3 54. Also excluded from the Class are all non-excluded members of the Settlement  
4 Class in the civil action entitled *Pantelyat v. Bank of America, N.A., et al.*, Case No. 16-cv-  
5 8964-AJN (S.D.N.Y.) who, between May 12, 2014 and April 6, 2017, incurred no overdraft fees  
6 resulting from non-recurring debit card purchases other than from non-recurring debit  
7 card purchases from Uber.

8 55. The members of the Class are so numerous that joinder is impractical. On  
9 information and belief, the Class consists of hundreds of thousands, and potentially millions,  
10 of members, the identity of whom is within the knowledge of Bank of America and can be  
11 ascertained only by resort to Bank of America's records.

12 56. The claims of the representative Plaintiff are typical of the claims of the Class  
13 in that the representative Plaintiff, like all Class members, was charged overdraft fees by  
14 Bank of America between May 12, 2014 and April 6, 2017 as a result of non-recurring debit  
15 card transactions that were mis-classified as recurring transactions and authorized into a  
16 negative balance. Plaintiff, like all Class members, has been damaged by Bank of America's  
17 misconduct in that she was assessed unlawful overdraft charges in breach of the governing  
18 Deposit Agreement. Furthermore, the factual basis of Bank of America's misconduct is  
19 common to all Class members and represents a common thread of unlawful, unfair, and  
20 unconscionable conduct resulting in injury to all members of the Class.

21 57. There are numerous questions of law and fact common to the Class and those  
22 common questions predominate over any questions affecting only individual Class  
23 members. Among the questions of law and fact common to the Class are whether Bank  
24 of America:

- 25 a. Misclassified as "recurring" in nature, or failed to properly re-  
26 classify as "non-recurring" in nature, as those terms are defined  
27 by the relevant Bank of America contractual documents in effect  
28 between May 12, 2014 and April 6, 2017, any debit card  
transactions made between May 12, 2014 and April 6, 2017;

1  
2 b. Authorized into a negative account balance between May 12, 2014  
3 and April 6, 2017 any debit card transactions that were in fact  
4 “non-recurring,” within the meaning given to that terms by the  
5 relevant Bank of America contractual documents in effect  
6 between May 12, 2014 and April 6, 2017;

7 c. Imposed any overdraft fees between May 12, 2014 and April 6,  
8 2017 on any debit card transactions that were “non-recurring” in  
9 nature, within the meaning given to that term by the relevant  
10 Bank of America contractual documents in effect between May  
11 12, 2014 and April 6, 2017;

12 58. Other questions of law and fact common to the Class include:

13 a. The proper method or methods by which to measure damages;

14 b. Whether the Class is entitled to interest that has accrued on any  
15 improperly assessed overdraft fees; and

16 c. The declaratory relief to which the Class are entitled.

17 59. Plaintiff’s claim are typical of the claims of other Class members in that they  
18 arise out of the same overdraft policies governed by Bank of America’s Deposit Agreement  
19 and other related documents in effect between May 12, 2014 and April 6, 2017, and arise  
20 out of the same conduct and practices of Bank of America in classifying transactions and  
21 imposing overdraft fees that occurred between May 12, 2014 and April 6, 2017. Plaintiff has  
22 no interests antagonistic to the interests of any other Class member.

23 60. Plaintiff is committed to the vigorous prosecution of this action and has  
24 retained competent counsel experienced in the prosecution of consumer class actions.  
25 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect  
26 the interests of the Class.

27 61. A class action is superior to other available methods for the fair and efficient  
28 adjudication of this controversy. Since the amount of each individual Class member’s claim  
is small relative to the complexity of the litigation, and due to the enormity of the financial  
resources of Bank of America, no Class member could afford to seek legal redress

1 individually for the claims alleged herein. Therefore, absent a class action, the Class  
2 members would lose their rights by attrition, and Bank of America's misconduct could  
3 continue with impunity..

4 62. Even if Class members themselves could afford such individual litigation, the  
5 court system could not. Given the complex legal and factual issues involved in this action,  
6 individualized litigation would significantly delay and cause expense to all parties and the  
7 Court. Individualized litigation would also create the potential for inconsistent or  
8 contradictory rulings. By contrast, a class action presents far fewer management  
9 difficulties, allows claims to be heard which might otherwise go unheard because of the  
10 relative expense of bringing individual lawsuits, and provides the benefits of adjudication,  
11 economies of scale, and comprehensive supervision by a single court.

12 **SOLE CLAIM FOR RELIEF**  
13 **BREACH OF CONTRACT**  
14 **(Individually and On Behalf of the Class)**

15 63. Plaintiff repeats and incorporates herein all allegations from paragraphs 1-62  
16 above.

17 64. Plaintiff and all members of the Class contracted with Bank of America for  
18 bank account deposit, checking, ATM, and debit card services, as embodied in Bank of  
19 America's Deposit Agreement and related account documentation in effect between May  
20 12, 2014 and April 6, 2017.

21 65. Bank of America breached the terms of the Deposit Agreement and related  
22 account documentation in effect between May 12, 2014 and April 6, 2017 by charging  
23 overdraft fees to Plaintiff and the other members of the Class as a result of non-recurring  
24 debit card transactions authorized into a negative balance between May 12, 2014 and April  
25 6, 2017.

26 66. In plain, clear, and simple language, in the Deposit Agreement and related  
27 account documentation in effect between May 12, 2014 and April 6, 2017, Bank of America  
28 promised Plaintiff and all other members of the Class (1) that it would not authorize, and

1 would not charge an overdraft fee on, a non-recurring debit card transaction where  
2 insufficient funds exist to cover the transaction; and (2) that it would authorize, and would  
3 charge an overdraft fee on, a recurring debit card transaction where insufficient funds exist  
4 to cover the transaction. *See* Ex. A, at 12-13.

5         67. Bank of America breached the express terms of the Deposit Agreement and  
6 other related account documentation in effect between May 12, 2014 and April 6, 2017 when  
7 it authorized into a negative balance, and then assessed overdraft fees on, “non-recurring”  
8 debit card transactions initiated between May 12, 2014 and April 6, 2017.

9         68. Specifically, Bank of America breached its contractual promises to Plaintiff  
10 and all members of the Class by mislabeling Lyft and other one-time, “non-recurring” debit  
11 card transactions as “recurring” debit card transactions, as those terms are defined in the  
12 Deposit Agreement and other related account documentation in effect between May 12,  
13 2014 and April 6, 2017, and by authorizing into negative balances and then imposing \$35.00  
14 overdraft fees as a result of such transactions made between May 12, 2014 and April 6,  
15 2017.

16         69. At all times between May 12, 2014 and April 6, 2017, Lyft charges constituted  
17 “recurring” charges within the meaning of the Deposit Agreement and related  
18 documentation in effect between May 12, 2014 and April 6, 2017.

19         70. No reasonable person would, at any time between May 12, 2014 and April 6,  
20 2017, consider Lyft charges to be “recurring” charges within the meaning of the Deposit  
21 Agreement and related account documentation in effect between May 12, 2014 and April 6,  
22 2017.

23         71. Plaintiff and the members of the Class reasonably believed, based upon the  
24 Deposit Agreement and related documents in effect between May 12, 2014 and April 6, 2017,  
25 as well as other statements made by Bank of America interpreting those documents, that  
26 Lyft charges are non-recurring transactions, that Bank of America would only authorize  
27  
28

1 Lyft purchases if available funds existed to cover the transaction, and that under no  
2 circumstances would an overdraft fee be imposed as a result of such a transaction.

3 72. At no time between May 12, 2014 and April 6, 2017 did any contractual  
4 provision exist authorizing Bank of America to charge overdraft fees on non-recurring debit  
5 card transactions such as Lyft transactions that were initiated by Plaintiff or any other  
6 Class member between May 12, 2014 and April 6, 2017.

7 73. Plaintiff and members of the Class have performed all of the obligations  
8 imposed on them under the Deposit Agreement and related documentation in effect  
9 between May 12, 2014 and April 6, 2017.

10 74. Plaintiff and members of the Class sustained monetary damages between May  
11 12, 2014 and April 6, 2017 as a result of Bank of America's breaches of the Deposit  
12 Agreement and related account documentation in effect between May 12, 2014 and April 6,  
13 2017.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff Karen C. Alexander, individually and on behalf of the Class,  
16 demands a jury trial on all claims so triable and judgment as follows:

17 A. Declaring Bank of America's overdraft fee policies and practices described  
18 above to be wrongful, unfair, and unconscionable;

19 B. Awarding actual damages in an amount according to proof;

20 C. Awarding restitution for all overdraft fees collected by Bank of America by  
21 Plaintiff and the Class resulting from the wrongs alleged herein in an amount to be  
22 determined at trial;

23 D. Disgorgement of the ill begotten gains derived by Bank of America from its  
24 misconduct;

25 E. Awarding punitive and exemplary damages;

26 F. Awarding pre-judgment interest at the maximum rate permitted by applicable  
27 law;  
28

1           G.     Awarding costs and disbursements assessed by Plaintiff in connection with  
2 this action, including reasonable attorneys' fees pursuant to applicable law; and

3           H.     Awarding such other relief as this Court deems just and proper.  
4

5                               **JURY TRIAL DEMAND**

6           Plaintiff, on behalf of herself and the Class, hereby demands a trial by jury pursuant  
7 to Federal Rule of Civil Procedure 38(b) on all claims so triable.

8 Dated: May 12, 2018

Respectfully submitted,

9                               **HEDIN HALL LLP**

10                              By: s/ David W. Hall

David W. Hall

11                              David W. Hall (SBN 274921)

12                              dhall@hedinhall.com

13                              Frank S. Hedin (SBN 291289)

fhedin@hedinhall.com

14                              Four Embarcadero Center, Suite 1400

San Francisco, CA 94104

15                              Telephone: (415) 766-3534

Facsimile: (415) 402-0058

16                              By: s/ Robert Ahdoot

Robert Ahdoot

17                              Robert Ahdoot (SBN 172098)

18                              rahdoot@ahdootwolfson.com

19                              Tina Wolfson (SBN 174806)

twolfson@ahdootwolfson.com

AHDOOT & WOLFSON, PC

20                              10728 Lindbrook Dr.

Los Angeles, CA 90024

21                              Telephone: (310) 474-9111

22                              Facsimile: (310) 474-8585

23                              *Counsel for Plaintiff and the Putative Class*  
24  
25  
26  
27  
28